

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17603
[REDACTED])	
Petitioner.)	DECISION
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On July 25, 2003, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing use tax, penalty, and interest for the period January, 2003 in the total amount of \$11,844.

On August 20, 2003, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing before the Commission.

The relevant facts are not in dispute. FAA records show that sometime in January 2003, the taxpayer acquired an airplane from [Redacted], a related corporation. [Redacted] another related party, purchased the airplane sometime in the late 1980s. In 1999 [Redacted] sold the aircraft to [Redacted]. The Commission staff reviewed that sale and determined that it was exempt, pursuant to Idaho Code § 63-3622K(b)(2). The Commission staff later reviewed the sale from [Redacted] to the taxpayer. This second sale was held to be taxable. The taxpayer's letter of protest stated essentially these facts. The taxpayer did not present any arguments in support of its position other than to state: "We believe that all of the above transfers are exempt from sales tax under the related party rules..." The letter did not cite any specific statutes or administrative rules.

The Idaho Sales Tax Act does provide some specific exemptions for sales between related parties. Idaho Code § 63-3622K, otherwise known as the occasional sale exemption, states:

63-3622K. Occasional sales -- (a) There are exempted from the taxes imposed by this chapter occasional sales of tangible personal property.

(b) As used in this section, the term "occasional sale" means:

(1) A sale of property not held or used by a person in the course of an activity for which he is required to hold a seller's permit, provided such sale is not one (1) of a series of sales sufficient in number or of such a nature as to constitute the seller a "retailer" under section 63-3610(c), Idaho Code.

(2) Any transfer of all or substantially all of the property held or used by a person in a business requiring a seller's permit when, after such transfer, the real or ultimate ownership of such property is substantially similar to that which existed before such transfer. For the purpose of this section, stockholders, bondholders, partners, or other persons holding an interest in a corporation or other entity are regarded as having a "real or ultimate ownership" of the property of such corporation or other entity.

(3) A transfer of capital assets to or by a business when the transfer is accomplished through an adjustment of the beneficial interest of the business and the transferor has paid sales or use taxes pursuant to section 63-3619 or 63-3621, Idaho Code, on the capital assets, incidental to:

i) A division of joint venture, partnership, or limited liability company assets among the members or partners in exchange for a proportional reduction of the transferee's interest in the joint venture, partnership, or limited liability company. For the purposes of this section, the term "limited liability company" means a business organization as defined in chapter 6, title 53, Idaho Code;

(ii) The formation of a partnership, joint venture, or limited liability company by the transfer of assets to the partnership, joint venture, or limited liability company or transfers to a partnership, joint venture, or limited liability company in exchange for proportionate interests in the partnership, joint venture, or limited liability company;

(iii) The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for stock in proportion to assets contributed;

(iv) The transfer of assets of shareholders in the formation or dissolution of a corporation;

(v) The transfer of capital assets by a corporation to its stockholders in exchange for surrender of capital stock;

(vi) The transfer of assets from a parent corporation to a subsidiary corporation which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;

(vii) The transfer of assets from a subsidiary corporation which is owned at least eighty percent (80%) by the parent corporation to a parent corporation or another subsidiary which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets.

(4) The sale, lease or rental of a capital asset in substantially the same form as acquired by the transferor and on which the initial transferor has paid sales or use taxes pursuant to section 63-3619 or 63-3621, Idaho Code, when the owners of all of the outstanding stock, equity or interest of the transferor are the same as the transferee or are members of the same family within the second degree of consanguinity or affinity.

(5) The sale of substantially all of the operating assets of a business or of a separate division, branch, or identifiable segment to a buyer who continues operation of the business. For the purpose of this subsection, a "separate division, branch, or identifiable segment" shall be deemed to exist if, prior to its sale, the income and expense attributable to such "separate division, branch, or identifiable segment" could be separately ascertained from the books of accounts and records.

(6) Sales by persons who are not defined as "retailers" in section 63-3610, Idaho Code.

(7) Sales of animals by any 4-H club or FFA club held in conjunction with a fair or the western Idaho spring lamb sale.

(8) The sale or purchase of tangible personal property at home yard sales; provided however, that no more than two (2) such home yard sales per individual calendar year shall be exempt.

c) As used in this section, the term "occasional sale," when applied to the sale of a motor vehicle, means only:

1) Sales of motor vehicles between members of a family related within the second degree of consanguinity, unless a sales or use tax was not imposed on the sale of that motor vehicle at the time of purchase, in which situation the sale is taxable.

2) Sales of motor vehicles that fall within the scope of the transactions detailed in subsection (b)(2) through (b)(5) of this section.

(d) The exemption provided by subsection (b)(1), (b)(4), (b)(6) or (b)(8) of this section shall not apply to the sale, purchase or use of aircraft, as defined in section 21-201, Idaho Code, nor shall it apply to the sale, purchase or use of boats or vessels, as defined in section 67-7003, Idaho Code,

nor shall it apply to the sale, purchase or use of snowmobiles, recreational vehicles or off-highway motorbikes, as defined in section 63-3622HH, Idaho Code. (Emphasis added.)

The current subsections (b)(3) and (b)(4) were added in 1990. At that time both subsections included parallel language requiring that the transferor had paid sales or use tax on its purchase of the assets it was selling. For example, a parent corporation could sell an asset to a subsidiary corporation exempt from tax as long as the parent company had paid sales or use tax when it purchased the asset. A subsequent sale of the same asset from the subsidiary back to the parent would be taxable because the subsidiary did not pay sales or use tax on the purchase.

In 1996 the legislature amended the statute again, inserting the word “initial” in subsection (b)(4). After this amendment, the same asset can be sold between related parties any number of times as long as the initial transferor had paid sales tax and the owners of all of the outstanding stock of the transferor are the same as the transferee or are members of the same family within the second degree of consanguinity or affinity. The word initial was not added to subsection (b)(3).

If the asset in question were not an airplane, the sale between the two corporations might qualify for the exemption provided by Idaho Code § 63-3622K(b)(4); however, subsection (d) states expressly that sales of aircraft do not qualify for that exemption. Because the transferor, [Redacted] did not pay sales tax on its purchase of the airplane, the exemptions provided by subsection (b)(3) do not apply. The sale of the airplane is therefore taxable.

WHEREFORE, the Notice of Deficiency Determination dated July 25, 2003, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty, and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$9,250	\$2,313	\$511	\$12,074

Interest is calculated through March 15, 2004.

DEMAND for immediate payment is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is included with this decision.

DATED this ____ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2004, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.